

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

TAMMY DEES and DAKOTA BOLAND,

Plaintiffs,

5:20-cv-1537 (BKS/MJK)

v.

T.L. CANNON CORP., T.L. CANNON
MANAGEMENT CORP., TLC WEST, LLC,
TLC CENTRAL, LLC, TLC UTICA, LLC,
TLC EAST, LLC and TLC NORTH, LLC,

Defendants.

Appearances:

For Plaintiff:

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Fayetteville, NY 13066

James E. Murphy
Jack L. Newhouse
Lloyd R. Ambinder
Michele A. Moreno
Virginia & Ambinder, LLP
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For Defendants:

Jessica F. Pizzutelli
Craig R. Benson
Erin M. Train
Littler Mendelson, P.C.
375 Woodcliff Drive, 2nd Floor
Fairport, NY 14450

Hon. Brenda K. Sannes, Chief United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiffs Tammy Dees and Dakota Boland commenced this putative class action asserting claims under the Fair Labor Standards Act (FLSA), the New York Labor Law and related state regulations arising out of their employment at locations owned and operated by Defendants. (Dkt. No. 1). On February 23, 2024, Plaintiffs filed a motion for class certification and for leave to file an amended complaint. (Dkt. No. 56, 57). Defendants opposed the motion and filed a cross-motion for summary judgment under Fed. R. Civ. P. 56(a) seeking to dismiss the complaint. (Dkt. No. 70). The motions were fully briefed. (Dkt. No. 73, 76). This matter was assigned to United States Magistrate Judge Mitchell J. Katz who, on July 1, 2024, issued a Report-Recommendation recommending that Plaintiffs' motion for leave to amend be granted, and that Plaintiffs' amended complaint (Dkt. No. 56-4) be accepted for filing as the operative pleading in this action; that Defendants' motion for partial summary judgment be granted in part, in that the FLSA claim alleged in Count III of the amended complaint be dismissed with prejudice; that the district court decline to exercise supplemental jurisdiction over Plaintiffs' state law claims, and thus that the remaining causes of action in the amended complaint be dismissed without prejudice to refiling in state court; and that Plaintiffs' motion for class certification be denied as moot. (Dkt. No. 78). Magistrate Judge Katz advised the parties that under 28 U.S.C. § 636(b)(1), they had fourteen days within which to file written objections to the report and that the failure to object to the report within fourteen days would preclude appellate review. (Dkt. No. 78, at 15). No objections were filed.

As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory

committee's note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Court adopts the Report-Recommendation in its entirety.

For these reasons, it is

ORDERED that Plaintiffs' motion for leave to amend the complaint (Dkt. No. 56) is **GRANTED**, and Plaintiffs' amended complaint (Dkt. No. 56-4) is accepted for filing as the operative pleading in this action, and it is further

ORDERED that Defendants' motion for partial summary judgment (Dkt. No. 70) is **GRANTED IN PART**, in that the FLSA claim alleged in Count III of the amended complaint is **DISMISSED WITH PREJUDICE**, and it is further

ORDERED that the Court declines to exercise supplemental jurisdiction over Plaintiffs' state law claims, and thus the remaining causes of action in the amended complaint are **DISMISSED WITHOUT PREJUDICE** to refiling in state court, and it is further

ORDERED that Plaintiffs' motion for class certification (Dkt. No. 56) is **DENIED** as moot, without prejudice to refiling in state court; and it is further

ORDERED that the Clerk of the Court shall enter judgment and close this case; and it is further

ORDERED that the Clerk serve a copy of this Order upon the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: July 19, 2024
Syracuse, New York


Brenda K. Sannes
Brenda K. Sannes
Chief U.S. District Judge